IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1811 OF 2006
ALONG WITH
CHAMBER SUMMONS NO. 197 OF 2006

Ishwarsingh Gangasingh
Chowhan and Others ... Petitioners

Vs.

Bombay Building Repairs and
Reconstruction Board and Ors. ... Respondents

Mr. E.P. Bharucha, Sr. Counsel with Mr. N.H. Seervai, Sr. Counsel i/by Wadia Ghandy & Co. for Petitioner.

Mr. G.W. Mattos, A.G.P. for R. Nos. 1 and 2.

Mrs. P.A. Purandhare for R. No. 3.

Mr. Z. Kamdin i/by D.H. Shah for R. No. 4.

Mr. V.N. Katawala for Intervenor/Applicant in Ch. Summons No. 197 of 2006.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 28th July, 2006

P.C.:

. Rule. Heard forthwith.

. The Petitioners have approached this court seeking amongst others reliefs to set aside the notices as set out in Prayer Clause (a) and or to withdraw the same in terms of Prayer Clause (b). It may be shortly stated that the premises which are subject matter of the dispute requires repairs in terms of the directions issued by Respondent NO.1 and 2. It is the case of MHADA, that considering the provisions of the Act and the directions issued by the State Government, the occupants have to vacate the premises. The Petitioners who are residing therein have approached this court to point

out that, on the facts and circumstances of the case and report of the structural engineers, there is no necessity that the they should vacate the premises for the work to be carried out and the work can be carried on without the Petitioners vacating the premises.

. On the last occasion when the matter came up, the Petitioners were called upon to file affidavit of Structural Engineer to that effect. Shri. Mohammad Khalid Myageri, Structural Engineer and Proprietor of Strescon Consultants has filed an affidavit. In the said affidavit, he has set out that he has inspected the building and in his opinion, the repairs can be carried on without the occupants vacating the premises. It is also pointed out that even while the said repairs are being carried out the occupants of the said building may continue to occupy the said building, and in doing so there is no danger which will be caused to the life of any occupant of the said building. It is also pointed out that the passages which require structural repairs as stated above are facing towards the internal gallery of the said building and none face the main road. Therefore, it is stated that no danger would be caused to any pedestrians while the repairs to the said buildings are in progress. The said report has been taken on record.

. On behalf of the Respondent Nos. 1 and 2 it is pointed out that they have already appointed a contractor but on the peculiar facts and circumstances, they have no objections to the Petitioners appointing their contractor subject to the condition that if the contractor claims any compensation from them, that compensation would be the liability of the Petitioners subject to whatever legal steps that maybe available for ascertaining the correct amount that is due and payable.

. Mr. Kamlesh Singh Chavan,claiming as the landlord and coowner has filed application for intervention by way of Chamber Summons No. 197 of 2006 and has also filed affidavit today. In Paragraph 11, it is set out that he has no objection to the order being passed in the matter of structural repairs. It is, however, pointed out that any permission for repairs should not prejudice the pending proceedings against the tenants/occupants and also to execution of the decree for recovery of possession passed in his favour. It is further set out that carrying on of any construction or repairs by any occupant/builder should not be deemed that such occupant/builder acquired any right in respect of the occupied premises. In so far as repairs to C-19, C20 and C21 the premises in his occupation and in respect of the

premises and other areas in his possession, the counsel for parties agree that they will file a plan in this court showing the areas in possession of the intervenor herein.

. We make it clear that any dispute between the co-owners including the intervenor and the Petitioner No. 1 can be dealt with independently and is not the subject matter of the present petition. In the light of the above, the Petition along with chamber summons is disposed of with the following directions :

1. The Petitioners to carry out repairs by appointing architect from the panel maintained by Respondent Nos. 1 and 2.

2. On the peculiar facts of this case, Respondent Nos. 1 and 2 have no objection to petitioners appointing independent contractor, subject to the condition that the contractor appointed by the Respondent Nos. 1 and 2 if claims any damages against Respondent Nos. 1 and Respondent No. 2, that liability would be of the Petitioners. The permission is granted subject to this condition. Petitioner to file an undertaking to this court to that effect before the work is commenced. Needless to say that it will be open to the Petitioners, if they deposit the amount as claimed to agitate it in

a proper forum or court and only the amount as decided by the court or forum would then be payable.

3. In so far as Intervenor is concerned, the repairs will be carried out subject to what is set out in Paragraph 11 of the affidavit filed on behalf of the intervenor.

4. The repairs to be carried out in terms of the sanctions given by the Respondent Nos. 1 and 2 as also by the B.M.C. The copy of the sanctioned plans and other documents issued by Respondent Nos. 1 and 2 as also by B.M.C. be given to intervenor herein. The intervenor would give his no objection to the same unless the plan shows any additional constructions.

5. It is further made clear that neither Respondent No. 1 and or 2 or the said intervenor will be liable for any loss to life or property if any mishap before carrying out construction may occasion, whilst carrying out the construction and or in the course of construction. The liability will be solely that of the petitioners.

6. The Petitioners to submit plans of Architect who is not black listed and to do so within two weeks from today. On such compliance, Respondent Nos. 1

and 2 to grant permission within two weeks thereafter.

. Similarly the Corporation on the I.O.D. and C.C. been sought for and applied, to grant the same within four weeks of the Petitioner complying with all requirements.

. With the above observations, Petition along with Chamber Summons disposed of. Liberty to apply.

(MRS.V.K.TAHILRAMANI,J.) **(F.I.REBELLO, J.)**